

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5532 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HARISHKUMAR P RATHOD

Versus

KARALA STATE COIR CORPORATION LTD.

Appearance:

MS SANGEETA VISHIN for Petitioner

MR PV HATHI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/04/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner, an employee of Kerala State Coir Corporation and posted at its Ahmedabad showroom, by this writ petition, challenges the order, annexure-A, dated 15th July 1997, under which he was ordered to be transferred and posted at its Madras showroom.

#. This transfer is stated to be only on temporary basis. This writ petition has come up for admission before this Court on 30th July 1997 on which date notice has been issued to the other side and interim relief in terms of para-8(B) has been granted.

#. After notice the matter was placed in the Court on 10.10.97 and this Court passed the order which reads as under:

Rule. To be heard on 20.11.97. Mr.P.V.Hathi, Id. Advocate waives service of Rule for the respondents. The interim relief to continue till further orders. Meanwhile, the petitioner may make a representation to the Managing Director of the respondent-Corporation. It is expected that before the next date of hearing, the representation shall be considered by the authorities of the respondent in its right perspective and sympathetically. The petitioner will make such representation within a period of one week from today.

#. So it is no more in dispute that this transfer order was not given effect to as this Court has granted interim relief in favour of the petitioner and which continues till this date. In pursuance of the order of this Court dated 10.10 .97, the Managing Director of the respondent-Corporation decided the representation of the petitioner and he declined to reconsider the matter of transfer of the petitioner. It is not in dispute that under the impugned order, another person Mr.Laxman A.Hirvania was transferred to Jaipur showroom. He filed Special Civil Application no.5534 of 1997 before this Court and this order has been stayed and similar order has been issued on 10th October 1997 for consideration of representation.

#. The learned counsel for the respondent-Corporation does not dispute that in the case of this person, the Managing Director, after considering his case, had decided to keep his transfer order in abeyance for the time being. Special Civil Application No.5534/97 filed by this person was dismissed as having become infructuous today. From the order dated 15th July 1997, I find that it is only a temporary transfer and now more than one year and eight months have already been passed, there may not be any necessity of giving effect to this order. The learned counsel for the respondent-Corporation, during

the course of arguments, has given out that for these two posts, the respondent-Corporation may have to make regular appointments at the showrooms at Jaipur and Madras and it may take some time.

#. The Corporation has got more than sufficient time to take permanent employees there and when this order has been stayed, it became more urgent for it to appoint other persons at Jaipur and Madras. If it would have really been a case of urgent need at Jaipur and Madras show room, then in the case of one person, this order would not have been ordered to be kept in abeyance. Similarly, in case there would have really been in urgent need of the person, appointments would have been made at those two places. The learned counsel for the respondent-Corporation fairly submits that till this date, appointments have not been made. The petitioner is a low paid employee and transfer at such a long distance may cause manifold inconvenience and hardships. Madras is a metropolitan city and it may be very difficult for such a low paid employee to arrange for accommodation etc.

#. Another important aspect is the order of Managing Director dated 3.11.97 which have been passed in these two matter. I find that both the orders are identical in all respects, but only the operative part differs. This factual position is also accepted by learned counsel for the respondents. In the same set of facts and reasons and grounds, it is really shocking that the Managing Director has in one case, kept the order of the transfer of the person concerned in abeyance and in another case, it has not been done. This shows that the Managing Director has not fairly, impartially and reasonable dealt with these two matters. I do not find any distinguishable features in these two cases. From reading of these two orders, I am satisfied that the Managing Director has not only acted arbitrarily but in the case of similarly situated persons discrimination is sought to be made.

#. Taking into consideration the totality of the facts of the case, I am satisfied that this transfer which has been made only on temporary basis now needs not to be given effect to. In the result, this Special Civil Application succeeds and the same is allowed. Rule is made absolute. No order as to costs.

(S.K.Keshote, J.)

[sunil]